

THE NEW YORK TIMES
18 August 1977

Judge Bids U.S. Apologize to 3 For C.I.A. Abuse

By PETER KIHSS

In the first decision growing out of the Central Intelligence Agency's domestic mail-monitoring, Judge Jack B. Weinstein yesterday ordered the Government to pay \$1,000 and court costs—and to write an apology—to each of three plaintiffs whose mail had been opened during the undercover program.

Judge Weinstein reported in his decision in Federal District Court, Brooklyn,

*Text of proposed letter of apology
is printed on Page 26.*

that "at least 215,000 pieces of mail" were opened during an illegal project that lasted from 1953 to 1973. This, said the American Civil Liberties Union, which represented two of the three plaintiffs, could mean a potential liability of at least \$215 million for the Government.

However, Judge Weinstein's decision noted that many persons involved would not consider that they had been harmed or wanted damages.

Other Suits Pending

His decision was the first growing out of the mail-opening program. The civil liberties group said six to 10 similar suits were pending, including one in Federal Court in Rhode Island in which it is arguing that individual officials like Richard Helms, former C. I. A. director, as well as the Government, should be liable for violations.

The chief assistant United States attorney for the Eastern District of New York, Edward R. Korman, said that any decision on appealing Judge Weinstein's order would be up to the Solicitor General, Wade McCree, and was still under study.

Later yesterday, an assistant attorney general, Barbara Allen Babcock sent Judge Weinstein a message that the Justice Department was "amenable to the court's suggestion" of a letter of regret to each plaintiff. She enclosed a draft to be "signed by a senior nonlitigating official at the highest levels of the government."

The proposed apology says that the

mail-opening program has been halted by executive order; the C.I.A. has no current authority to open mail; any such mail-opening now would be prosecuted, but "the ultimate legality or illegality" of the earlier program remains for the courts to decide. The proposed letter expresses the hope that it would restore the plaintiffs' "trust in the integrity of our free institutions."

1.5 Million Names Entered

The three plaintiffs in the Brooklyn case were Norman Birnbaum, Amherst College professor of sociology, who has written a Soviet professor about a forthcoming meeting on sociology of religion; Mary Rule MacMillen, a placement coordinator at Boston University in Boston, who has written to a Soviet dissident, and B. Leonard Avery, a Minneapolis advertising executive, who has been sent a letter by his son, an exchange student at Moscow State University.

In his 57-page decision, Judge Weinstein said the C.I.A. had put into its computers 1.5 million names gleaned from the mail-opening project. He said there had been a pattern of Government "abuse of power," and "breaking this pernicious pattern and preventing its recurrence" was up to Congress and the President.

But the courts, Judge Weinstein said, should decide reparations to affected individuals. He said an advisory jury, whose members had varying proposed damages of \$2,500, \$5,000 or \$10,000 last May 12, had made "somewhat high" recommendations.

Damages under the Federal Tort Claims Act can only be "compensatory," not "punitive," Judge Weinstein said. None of the three plaintiffs had cited loss of money, jobs or reputation, he said, but he held they had suffered invasion of privacy and "actual mental pain, outrage and shock."

Judge Weinstein said his award of \$1,000 apiece had been decided in part on the similarity to action by Congress in the Omnibus Crime Control and Safe Streets Act of 1968. This, he said, "created a right to civil recovery for individuals whose telephone or oral conversations were intercepted without legal sanction by wiretaps or eavesdropping," setting a basic damage figure of \$100 a day or \$1,000, whichever is larger.

'Live by Our Ideals'

"In this country," Judge Weinstein wrote, "we do not pay lip service to the value of human rights and individual dignity—we mean to live by our ideals. A primary role of the courts is to translate these noble sentiments into palpable reality."

In asserting that "the American people have already paid a considerable price for the C.I.A.'s illegal mail search activities," Judge Weinstein wrote:

"In addition to the large out-of-pocket expenditures in operating the program, there has been a perceptible widespread

loss of confidence in the integrity of the mails and in the right of individuals to be free from surreptitious intrusions into their privacy by government officials."

Granting money damages and other relief against the Government and its agents, he said, "makes our Constitution and laws consequential to our citizens rather than pretentious, empty promises."

Joel M. Gora, assistant A. C. L. U. legal director, said yesterday the organization had informed inquirers how to make requests under the Freedom of Information Act to find out if their mail had been opened, and if so how to file administrative claims required by the Federal Tort Claim Act.

The civil liberties group, Mr. Gora said, was ready to represent such persons in court.

STAT